

CHAPTER 208
FORMERLY
HOUSE BILL NO. 208

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DIVISION OF LONG TERM CARE RESIDENTS PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Subchapter VI, Chapter 79, Title 29 of the Delaware Code as follows and redesignating accordingly:

Subchapter VI. Division of Health Care Quality.

§ 7970. Intent.

(a) It is the intent of the General Assembly that the primary purpose of this subchapter, known as the Health Care Quality Act, is as follows:

(1) To ensure that individuals receiving health care services in long term, acute, or outpatient settings are safe and secure, receive quality care, and are free from abuse, neglect, mistreatment and financial exploitation.

(2) To promote the quality of care and quality of life for individuals receiving long term, acute, and outpatient health care services.

(3) To ensure that training programs for certified nursing assistants:

- a. Comply with state and federal statutes and regulations.
- b. Are regularly monitored for compliance.
- c. Are subject to sanctions for violations.

§ 7971. Division of Health Care Quality.

(a) There is hereby established the Division of Health Care Quality within the Department of Health and Social Services.

(b) Definitions.

(1) "Adult Abuse Registry" means a central registry of information established by § 8564 of Title 11 that relates to substantiated cases of adult abuse, neglect, mistreatment, or financial exploitation. Long term care facility, home care agency, adult day care facility, and prescribed pediatric extended care center employers must check the Adult Abuse Registry before hiring employees who would have direct access to residents and patients.

(2) "Department" means the Department of Health and Social Services.

(3) "Director" means the Director of the Division of Health Care Quality of the Department of Health and Social Services.

(4) "Division" means the Division of Health Care Quality of the Department of Health and Social Services.

(5) “Long term, acute, and outpatient health care services” means those services as defined in §122(3)m., §122(3)o., §122(3)p., §122(3)q., §122(3)s., §122(3)x., §122(3)y., §122(3)z., §122(3)aa. of Title 16; Chapter 10 of Title 16; or Chapter 11 of Title 16.

(c) The purpose of the Division of Health Care Quality is to promote the quality of life of individuals receiving long term, acute, and outpatient health care services and to ensure that they are safe and secure, receive quality care, and are free from abuse, neglect, mistreatment, and financial exploitation.

(d) The Division has all of the following duties and functions:

(1) Establish and implement policies and procedures, promulgate regulations, enforce state statutes and regulations regarding the quality of care and quality of life of individuals receiving long term, acute, and outpatient health care services and refer federal violations to the appropriate authorities with recommendations for enforcement.

(2) License facilities and services on an annual basis and conduct a variety of surveys and inspections including regular, complaint, and unannounced or unexpected surveys and inspections to determine compliance with federal and state statutes and regulations.

(3) Receive and investigate complaints of abuse, neglect, mistreatment, financial exploitation, and other concerns which may adversely affect the health, safety, welfare, or rights of such individuals including alleged violations of federal and state statutes and regulations and in connection with such duties and functions has the authority to obtain all of the following:

a. An individual's hospital records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been admitted to a hospital from the facility or agency or discharged from a hospital to the facility or agency.

b. An individual's emergency medical system and paramedic records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been transported to a hospital from a facility or agency or from a hospital to a facility or agency.

(4) Provide for systematic and timely notification, coordinated investigation, and referral of abuse, neglect, mistreatment, and financial exploitation complaints to the appropriate law-enforcement agencies and the Attorney General's office.

(5) Protect the privacy of the individual receiving long term, acute, or outpatient health care services and that individual's family.

a. The Division shall establish guidelines regarding the disclosure of information concerning abuse, neglect, mistreatment, and financial exploitation involving long term, acute and outpatient health care services.

b. The Division may require persons to make written requests for access to records maintained by the Division.

c. The Division may only release information to persons who have a legitimate public safety need for such information and such information shall be used only for the purpose for which the information is released.

(6) Maintain the Adult Abuse Registry as established by § 8564 of Title 11.

(7) In conjunction with the Attorney General's Office, develop and conduct training for Department staff and providers of long term, acute, or outpatient health care services on applicable statutes and regulations, as well as provide other educational workshops, including accident prevention and health promotion training, and other technical assistance as needed.

(8) Promote and advocate for consumer, resident, and patient rights.

(9) Meet regularly with individuals receiving long term care services and their families.

(10) Publish a report, as determined by the Division, to the Governor, Secretary, and General Assembly on the Division's activities, including comprehensive data analysis and monitoring of trends in the quality of care and quality of life of individuals receiving long-term care services in Delaware.

(11) Conduct quality assurance demonstration projects.

(12) Provide updated consumer information materials on an ongoing and as needed basis.

(13) Establish, maintain, and publicize a 24-hour state-wide toll free telephone hotline operating at all times and capable of receiving reports of abuse, neglect, mistreatment, and financial exploitation.

(14) Regulate the certification of nursing assistants, by doing all of the following:

a. Certifying nursing assistants pursuant to Chapter 30A of Title 16 and certifying nursing assistants from out of state who meet Delaware requirements.

b. Suspending or revoking the certificate of a certified nursing assistant for cause. Cause to suspend or revoke a certificate includes the following:

1. Placement of a finding of abuse, neglect, mistreatment, and financial exploitation against a certified nurse assistant on the Delaware Certified Nurse Assistant Registry.

2. The suspension or revocation of the certified nursing assistant's certificate by another state.

3. Circumstances where the certificate was obtained using false information.

4. Failure to complete bi-annual educational requirements.

(15) Regulate nurse assistant training by doing the following:

a. Approve curricula and develop criteria and standards for evaluating such training programs.

b. Provide for surveys of such programs at such times as it may deem necessary.

c. Ensure that such programs meet the requirements of Chapter 30A of Title 16 and 42

C.F.R., Ch. IV, Subchapter G, Part 483.

d. Deny or withdraw approval from training programs for failure to meet approved curricula or other criteria.

e. Establish requirements for mandatory continuing education.

f. Provide public access through an online source to the pass rates of all approved training programs.

(16) The Division may impose civil penalties against any nurse assistant training program, whether approved or not, for violations of the provisions of this subchapter or of Chapter 30A of Title 16, or the regulations adopted under this subchapter or Chapter 30A of Title 16. The maximum civil penalty is \$5,000 per violation.

a. In determining the amount of the penalty to be assessed, the Division shall consider all of the following:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation.

2. The history of violations committed by the person or the person's affiliate, employee, or controlling person.

3. The efforts made to correct the violation.

4. The culpability of the person or persons who committed the violation.

5. Whether a misrepresentation was made to the Division or to another person regarding any of the following:

A. The quality of services provided.

B. The academic performance of the program.

C. The identity of an owner or controlling person of the program.

6. Whether the program refused to allow a representative of the Division to inspect without notice at any time any of the following:

A. Any portion of the premises of the program.

B. Any documents, records, or files required to be maintained by the program.

7. Whether the program wilfully interfered with the work of a representative of the Division or with the enforcement of any statute or regulations.

8. Any other matter that affects the operating requirements of the program, or the educational experience of its students.

b. Each day of a continuing violation constitutes a separate violation.

c. All civil penalties collected under this subchapter must be remitted to the State Civil Penalty Trust Fund.

d. The Division may add the amount of the civil penalty to the licensing fee for the program. If the licensee refuses to make the payment at the time of the application for renewal of its license, the Division may not renew the license.

e. The Division may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

f. Any entity upon which a penalty is imposed may request an administrative hearing under Department regulations before such penalty becomes final.

1. The hearing officer for the administrative hearing may compel the attendance of witnesses and the production of evidence.

2. The finding by the hearing officer constitutes the final decision of the Department and is appealable, on the record, by either party to Superior Court.

(17) Develop a format, known as the Interagency Transfer Form, for exchange of information between health care agencies and facilities regarding consumer, resident, or patient health conditions and care needs to ensure ongoing quality of care and consumer, resident, or patient centered care for the consumer, resident, or patient in any care setting.

(18) The Director, or the Director's designee, may issue subpoenas for named respondents or witnesses or documents, financial records, physical evidence, or any other source of evidence needed during the course of an investigation of a complaint or for a public hearing on a complaint. If a person subpoenaed fails to comply, the Division may compel compliance with the subpoena by filing a motion to compel in the Superior Court, which has jurisdiction to compel compliance.

§ 7972 Background Check Center.

(a) Purpose.

(1) It is the purpose of this section to establish an electronic system (Background Check Center) for the consolidation of various data streams necessary to provide a prospective employer or a current employer with information related to the suitability for employment of a person who provides care or services as follows:

a. In any capacity, including as an employee, an agent, or an independent contractor working in a long term care facility licensed under Chapter 11 of Title 16.

b. As an employee of a hospice agency, a home health agency, or a personal assistance services agency (home care agency) licensed under § 122(3)m., § 122(3)o., and § 122(3)x. of Title 16 working in a private residence.

c. As an employee of a prescribed pediatric extended care center licensed under § 122(3)q. of Title 16.

(2) It is the further purpose that the Background Check Center be self-supporting after the initial construction and initial operational phase.

(3) Utilization of the Background Check Center by an employer is mandatory to ensure that all individuals working in a long term care facility, a home care agency, or a prescribed pediatric extended care center are subject to comprehensive screening and updating of their criminal record.

(4) The Background Check Center must be a reliable source of information which enables prompt decision making.

(5) Each person screened through the Background Check Center has a right of appeal.

(b) Definitions. As used in this chapter:

(1) "Background Check Center" ("BCC") means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a long term care facility, home care agency, or prescribed pediatric extended care center.

(2) "Department" means the Department of Health and Social Services.

(3) "Employer" means a person or other legal entity that employs individuals to work in long term care facility, home care agency, or for a prescribed pediatric extended care center.

(4) "Home care agency" means all programs or agencies licensed under § 122(3)m., § 122(3)o., and § 122(3)x. of Title 16.

(5) "Long term care facility" means any facility licensed under Chapter 11 of Title 16.

() "Prescribed pediatric extended care center" means any facility licensed under § 122(3)q. of Title 16.

(6) "Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual.

(c) All employers who are required to secure criminal background checks under § 1141, § 1145, or § 1190 of Title 16 must process all applicants for employment through the BCC.

(d) The Department's Division of Management Services, with the approval of the Department Secretary, shall establish the appropriate fee to collect from BCC users.

(1) The fee shall approximate and reasonably reflect all costs necessary to defray the maintenance, operation, and development of the BCC.

(2) At the beginning of each calendar year the Division of Management Services, or any other state agency acting in its behalf, shall compute the appropriate fee and determine the effective date of any fee modification.

(3) All revenue generated under this section must be deposited in a special BCC fund account in the Division of Management Services.

(e) Due process protections of notice and opportunity to be heard must be provided to an applicant for employment who wishes to appeal BCC errors, or to appeal the imposition of sanctions under § 1141 or § 1145 of Title 16. The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of this title.

Approved February 14, 2018